

Court ruling on digital content copyright issue forces Government to withdraw flexibility



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Global Trade Research Initiative

1. Overview

On August 21, 2024, the Department for Promotion of Industry and Internal Trade (DPIIT) withdrew its memorandum, following a decisive ruling by the Bombay High Court in the case of *Tips Industries Ltd. vs. Wynk Music Ltd. & Anr.*

The rescinding of the DPIIT's 2016 Office Memorandum marks a landmark development in India's copyright law, particularly concerning the digital content industry.

This case highlighted the significant legal complexities surrounding statutory licensing under Section 31D of the Copyright Act, 1957, especially in the context of digital broadcasting.

The court's decision, which clarified that statutory licenses are confined to traditional broadcasting mediums like radio and television, has far-reaching implications for the digital content landscape in India, reinforcing the need for proper licensing in the evolving digital age.

2. O&M details and Court case

The Department for Promotion of Industry and Internal Trade (DPIIT) on August 21, 2024 rescinded its Office Memorandum No. 14-35/2015-CRB/LU (IPR-VII) dated September 5, 2016.

This action followed a ruling by the Bombay High Court in the case of *Tips Industries Ltd. vs. Wynk Music Ltd. & Anr.*, marking a pivotal moment in the intersection of digital content distribution and copyright law in India.

The central issue in this case revolved around the interpretation and scope of Section 31D of the Copyright Act, 1957, which deals with statutory licensing for broadcasting organizations.

3. 2016 DPIIT Order

The DPIIT's Office Memorandum from September 5, 2016, was issued to provide clarity on the application of Section 31D of the Copyright Act, 1957. The memorandum stated that the statutory licensing provisions were not confined to traditional broadcasting mediums like radio and television but also extended to internet broadcasting. The memorandum relied on the definition of "communication to the public" under Section 2(ff) of the Copyright Act, which includes making any work available to the public through various means, including satellite and cable. Based on this, the DPIIT concluded that internet broadcasters could obtain statutory licenses for the communication of literary and musical works, as well as sound recordings.

This expansion was significant as it recognized the growing influence of digital platforms and aimed to bring them under the regulatory framework of statutory licensing.

4. Problems with O&M

The DPIIT's 2016 Office Memorandum had broadened the definition of "broadcasting organization" to include internet-based platforms. This interpretation was controversial, as it extended the benefits meant for traditional radio and television broadcasting to internet broadcasters, raising legal and constitutional concerns.

The main point of contention was whether the DPIIT, as a regulatory body, had the authority to interpret statutory provisions in this manner. Critics argued that the DPIIT's order overstepped its jurisdiction, as the interpretation of laws is constitutionally reserved for the judiciary. This dispute laid the groundwork for the legal challenge that culminated in the Bombay High Court's ruling.

5. Court Decisions: The Tips Industries Ltd. vs. Wynk Music Ltd. Case

The Bombay High Court's involvement began during the interim injunction hearings in the case of *Tips Industries Ltd. vs. Wynk Music Ltd. & Anr.* The court was asked to rule on whether internet broadcasters like Wynk Music could legally avail themselves

of statutory licenses under Section 31D. The court's reference to the 227th Report of the Rajya Sabha Parliamentary Standing Committee on the Copyright (Amendment) Bill, 2010, was crucial. The report suggested that the Legislature had deliberately excluded "internet broadcasting" from Section 31D, despite the emergence of digital technologies during the 2012 amendment of the Copyright Act.

On June 18, 2024, the Division Bench of the Bombay High Court delivered its final judgment, ruling that statutory licenses under Section 31D are restricted to traditional broadcasting mediums, such as radio and television.

This decision was a turning point, as it clarified that internet-based services, including music streaming platforms like Wynk Music, could not claim the benefits of Section 31D.

The case concluded with a settlement between Tips Industries and Wynk Music, where Wynk agreed to pay ₹12 crore in a full and final settlement. This outcome reinforced the need for digital platforms to secure appropriate licenses and comply with the relevant copyright laws.

6. Rescinding of the DPIIT Order

Following the Bombay High Court's decision, the DPIIT rescinded its 2016 Office Memorandum on August 21, 2024. This action was a direct response to the court's ruling, acknowledging the judicial authority to interpret statutory provisions and ensuring that the DPIIT's guidelines were in alignment with the law. The rescinding of the memorandum was a crucial step in maintaining the integrity of statutory provisions and protecting the rights of copyright holders.

7. Importance of the Decision

The Bombay High Court's judgment and the subsequent rescinding of the DPIIT's memorandum have profound implications for the digital music industry in India.

The decision reaffirmed that statutory licenses under Section 31D are limited to traditional broadcasting mediums, excluding internet-based services. This clarification is likely to impact how digital platforms negotiate and obtain licenses, potentially increasing the cost and complexity of licensing agreements.

For copyright holders, the decision is a victory that strengthens the protection of their rights in the digital age. It emphasizes the importance of securing proper licenses before distributing copyrighted content online, which could lead to more stringent compliance practices within the industry.

On the other hand, digital music platforms have expressed concerns about the potential increase in licensing costs and the challenges of renegotiating agreements. The decision may also influence the availability of certain music on these platforms, as the cost of obtaining licenses could affect their business models.

8. International Precedents

The issues addressed in this case are not unique to India. Internationally, similar legal battles have shaped the digital content distribution landscape. For instance, the *Capitol Records, LLC v. ReDigi Inc.* case in the United States dealt with the resale of digital music files. The court ruled that reselling digital music without the copyright holder's permission violated copyright laws, underscoring the importance of obtaining proper licenses for digital content distribution.

Such precedents highlight the global relevance of the issues involved in the Tips Industries case and reinforce the need for clear regulations governing digital content in the rapidly evolving digital economy.

9. Conclusion

The rescinding of the DPIIT's 2016 Office Memorandum following the Bombay High Court's ruling in the Tips Industries Ltd. vs. Wynk Music Ltd. case marks a significant legal development in India's digital content and copyright landscape. It underscores

the judiciary's role in interpreting statutory provisions and the importance of ensuring that digital platforms comply with the correct licensing frameworks. The decision is expected to have a lasting impact on the digital music industry, influencing how music is licensed and distributed online while encouraging fair compensation for artists and rights holders ■.

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FEEDBACK

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